

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Willie Banks,

4 Plaintiff

5 v.

6 Nancy A. Berryhill, Acting Commissioner of
7 Social Security Administration,

8 Defendant

Case No.: 2:17-cv-02554-JAD-NJK

**Order Adopting
Report & Recommendation**

[ECF Nos. 20, 24, 26]

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10 Plaintiff Willie Banks brought this action for the court to review the Commissioner of
11 Social Security's denial of his application for disability-insurance benefits under Title II of the
12 Social Security Act. Having considered Banks's single-sentence motion to remand¹ and the
13 Commissioner's cross-motion to affirm,² the magistrate judge recommends that I deny the
14 motion to remand and grant the Commissioner's cross-motion.³ She reasons that Banks "fails to
15 articulate any legal analysis or point to any errors in the ALJ's determination warranting a
16 remand."⁴ Indeed, the entirety of his motion states "I Willie Banks would like to file motion to
17 remand [this case] new document from the doctor for disability benefits [sic]."⁵

18 Banks filed a timely objection to the report and recommendation.⁶ It's the same length as
19 his motion to remand and it states only "Please remand the R.R I need help I send doc report I
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22 ¹ ECF No. 20.

23 ² ECF No. 24.

24 ³ ECF No. 26.

25 ⁴ *Id.* at 9.

26 ⁵ ECF No. 20.

27 ⁶ ECF No. 27.
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1 am in middow [sic] of getting a new evaluation so please don't close my case."⁷ He includes
2 with his objection a copy of an August 2018 orthopedic evaluation,⁸ but he offers no discussion
3 of its relevance or how it justifies rejection of the magistrate judge's recommendation.

4 Even if I liberally construe this filing as a request for a remand based on new evidence,
5 Banks's effort falls short. To obtain a remand under sentence six of 42 U.S.C. § 405(g) based on
6 new evidence, a claimant must show "that there is new evidence [that] is material and that there
7 is good cause for the failure to incorporate [that] evidence into the record in a prior proceeding."
8 As Magistrate Judge Koppe accurately assessed in her report and recommendation, Banks did
9 not make that showing—and his objection gets him no closer to it.

10 Accordingly,

11 IT IS HEREBY ORDERED THAT:

- 12 • The Report and Recommendation [ECF No. 26] is **ADOPTED** in full, and Banks's
13 objection [ECF No. 27] is **OVERRULED**;
- 14 • Banks's Motion to Remand [ECF No. 20] is **DENIED**, and the Commissioner's Cross-
15 motion to Affirm [ECF No. 24] is **GRANTED**; the underlying decision is **AFFIRMED**;
- 16 • The Clerk of Court is directed to ENTER JUDGMENT ACCORDINGLY and CLOSE
17 THIS CASE.

18 Dated: February 14, 2019

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21 U.S. District Judge Jennifer A. Dorsey
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26 ⁷ *Id.*

27 ⁸ ECF No. 27-1.
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